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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. EDCV 10-02017 VAP
)	EDCR 09-00013-VAP
Plaintiff,)	
v.)	ORDER GRANTING MOTION TO DISMISS
NEAL HELMS,)	
Defendant.)	[Motion filed on January 26, 2011]

Movant/Defendant Neal Helms ("Helms") filed this Motion under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody on December 30, 2010 ("Mot."). He argues that the Bureau of Prisons ("BOP") has not given him proper credit for time served in custody, and seeks an order that he be released forthwith. (Mot. at 5.)

On January 26, 2011, the Government filed a Motion to Dismiss ("Mot. Dismiss"). The Government urges the Court dismiss this action for lack of jurisdiction under 28 U.S.C. § 2255; alternatively, it seeks dismissal on the

1 ground that Movant failed to exhaust his administrative
2 remedies with the BOP before filing suit. (Mot. Dismiss
3 at 1.) Movant did not file opposition to the Motion to
4 Dismiss.

5 6 **I. BACKGROUND**

7 Movant pled guilty before this Court to one count of
8 violating 18 U.S.C. § 922(f)(1), and on September 21,
9 2009 the Court imposed a sentence of 24 months
10 imprisonment. (Case No. EDCR 09-00013 VAP, Doc. No. 25
11 (J. and Commitment Order).) Movant did not file a direct
12 appeal from his conviction or sentence.

13 14 **II. DISCUSSION**

15 **A. The Court Has Jurisdiction to Entertain This Motion** 16 **under 28 U.S.C. § 2255**

17 The Government argues that the Court does not have
18 jurisdiction pursuant to 28 U.S.C. section 2255 to grant
19 the relief sought here, i.e., adjustment of Movant's
20 custody status based on credit for good time served,
21 because the time in which Movant could have filed a
22 direct appeal has elapsed. (See Mot. Dismiss at 4-5.)

23
24 None of the cases the Government cites directly
25 support this proposition, however. For example, although
26 the Government cites United States v. Sumner, 226 F.3d.
27 1005, 1013 (9th Cir. 2000), the Ninth Circuit in that
28

1 case considered only whether the district court had
2 authority to expunge a youthful offender's criminal
3 conviction in certain circumstances. Likewise, the
4 Government's citation to United States v. Crowell, 374
5 790 (9th Cir. 2004) is unpersuasive; there, the Circuit
6 again considered the district court's ancillary
7 jurisdiction to expunge records of unlawful arrests or
8 conviction. Finally, in United States v. Foumai, 910
9 F.2d 617, 620 (9th Cir. 1990), which the Government also
10 cites, the Circuit held that the district court may
11 modify or revoke its judgment during the period allowed
12 for appeal.

13
14 In sum, none of the Government's cases stand for the
15 proposition that the Court lacks jurisdiction here.

16
17 **B. Movant's Request for Relief Still Fails Even if**
18 **Construed as a Petition for a Writ for Habeas Corpus**
19 **Under § 2241 Because He Has Not Exhausted His**
20 **Administrative Remedies**

21 It appears the Government also contends Movant must
22 file a petition for writ of habeas corpus under § 2241.
23 Although the Government's contention is correct, the
24 cited cases are inapposite.

1 In Preiser v. Rodriguez, 411 U.S. 475 (1973), the
2 Supreme Court held that prisoners in state custody must
3 exhaust their state remedies before bringing a motion
4 under 28 U.S.C. § 2254(b). 411 U.S. at 491-92. Preiser
5 did not address the propriety of bringing a petition
6 under § 2241 instead of § 2255.

7
8 The Government's reliance on Crawford v. Bell, 599
9 F.2d 890 (9th Cir. 1979), is also misplaced. In
10 Crawford, the court affirmed the dismissal of the
11 petitioner's writ of habeas corpus because the petitioner
12 did not challenge the legality or duration of his
13 confinement, but instead claimed that the terms and
14 conditions of the petitioner's incarceration were
15 unconstitutional. 599 F.2d at 891-92. Badea v. Cox also
16 is dissimilar, as the plaintiff there brought a civil
17 rights action, not a writ of habeas corpus, and the court
18 affirmed the dismissal, holding only that "[h]abeas
19 corpus proceedings are the proper mechanism for a
20 prisoner to challenge the 'legality or duration' of
21 confinement." Badea, 931 F.2d 574 (citing Preiser, 411
22 U.S. at 484). The Badea court did not specify whether §
23 2241 or § 2255 was the proper mechanism for redressing
24 grievances based on allegedly-improper denial of good
25 time credits.

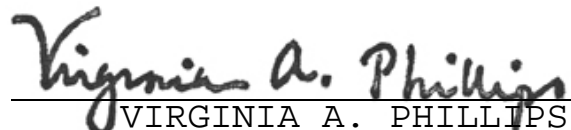
1 Although the Government did not provide relevant
2 authority for its contention, its position is well-taken;
3 denial of good time credits "are properly resolved
4 through administrative determination by the BOP or, if
5 necessary, through a habeas petition brought pursuant to
6 28 U.S.C. § 2241." United States v. Saeteurn, 504 F.3d
7 1174, 1180-81 (9th Cir. 2007); cf. Ortiz-Sandoval v.
8 Gomez, 81 F.3d 891, 895 n.2 (9th Cir. 1996) (noting
9 "Section 2255 provides for a motion to set aside or
10 vacate a sentence, addressed to the sentencing court.
11 Cases involving habeas petitions by federal prisoners
12 fall under section 2241 . . . often challenge
13 administration of parole, [and] computation of good time
14 credit"). Here, Movant's petition is improper,
15 as he brought it under 28 U.S.C. § 2255, not § 2241.

16
17 Nevertheless, even if the Court construed Movant's
18 petition as one brought under § 2241, it would still
19 fail.¹ "Federal prisoners are required to exhaust their
20 federal administrative remedies prior to bringing a
21 petition for a writ of habeas corpus in federal court."
22 Martinez v. Roberts, 804 F.2d 570, 571 (9th Cir. 1986)
23 (per curiam) (collecting cases); see also Tucker v.

24
25 ¹ To the extent the Government contends the Court
26 lacks jurisdiction because Movant has not exhausted his
27 administrative remedies, such a contention lacks merit.
28 See Tucker v. Carlson, 925 F.2d 330, 332 (9th Cir. 1991)
(noting that for habeas petitions "the exhaustion
requirement is not jurisdictional." (citing Brown v.
Rison, 895 F.2d 533, 535 (9th Cir. 1990))).

1 Carlson, 925 F.2d 330, 332 (9th Cir. 1991) ("Generally, a
2 federal prisoner is required to exhaust his federal
3 administrative remedies before filing a habeas
4 petition."). Here, BOP records indicate Movant has not
5 availed himself of the available federal administrative
6 remedies prior to bringing his petition. (Decl. of
7 George Cho ¶¶ 7-8.) Accordingly, as Movant has not
8 exhausted his administrative remedies, the Court
9 DISMISSES Movant's Petition WITHOUT PREJUDICE.

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11 Dated: May 16, 2011


VIRGINIA A. PHILLIPS
United States District Judge